

SENATE BILL No. 118

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1.

Synopsis: Publication of notice. With certain exceptions, requires publication of notices regarding a decedent's estate in a newspaper published and circulating in the county where the decedent died, in addition to the county in which the court having probate jurisdiction is located. Makes stylistic changes.

Effective: July 1, 2016.

Randolph Lonnie M

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 118

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-1-12, AS AMENDED BY P.L.95-2007,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 12. (a) Unless waived and except as otherwise
4 provided by law, all notices required by this article to be served upon
5 any person shall be served as the court shall direct by rule or in a
6 particular case, by **the following methods**:

7 (1) **If the person is a resident of Indiana, by:**

8 **(A)** delivering a copy of the notice to the person; or

9 **(B)** ~~by~~ leaving a copy of the notice at the person's last and
10 usual place of residence;

11 at least ten (10) days before the hearing. ~~if the person is a resident~~
12 **of the state of Indiana;**

13 (2) ~~publication~~; If the person is a nonresident of ~~the state of~~
14 Indiana or if the person's residence is unknown, **by publication**
15 **of the notice. Publication shall be** once each week for three (3)
16 **consecutive** weeks, ~~consecutively~~ **and the first day of**
17 **publication shall be at least thirty (30) days before the date set**



for hearing. Publication shall be made as follows:

(A) Except as provided in clause (B), publication shall be in a newspaper printed and circulating in the county: ~~where:~~

(i) in which the court in which the proceeding is pending is located; and

(ii) where the decedent's death occurred, if the decedent did not die in the county described in item (i).

(B) If no newspaper is printed in a county in which notice is required to be published under clause (A), then publication shall be in a newspaper that:

(i) circulates in that county; and

(ii) is designated by the judge or clerk.

~~the court is held, the first day of publication to be at least thirty (30) days prior to the date set for hearing; or in case there is no newspaper printed in the county, then in a newspaper circulating in the county where the proceeding is pending and designated by the judge or clerk;~~

(3) **Mailing the notice**, first class postage prepaid, ~~mail~~ addressed to the person located in the United States, at the person's address stated in the petition for the hearing. ~~to~~ **The notice shall** be posted by ~~depositing in at~~ any United States post office in ~~this state~~ **Indiana** at least fourteen (14) days prior to the date set for ~~the~~ hearing in the notice.

(4) Personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident. ~~which~~ **The** notice shall be served at least fourteen (14) days ~~prior to~~ **before** the date set for ~~the~~ hearing in ~~such the~~ notice. ~~or~~

(5) Any combination of two (2) or more ~~of the above~~ **methods set forth under subdivisions (1) through (4).**

(b) In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons:

(1) directed by the provisions of this article, or by order of the court, to be notified; **and**

(2) whose names and addresses:

(A) are known; or

(B) can by reasonable diligence be ascertained by the party charged with the duty of giving notice;

shall in addition to the published notice required by order, be served by a written notice by United States first class postage prepaid mail at least fourteen (14) days prior to the date set for ~~the~~ hearing in the notice.

(c) The personal representative or party charged with the duty of



giving notice shall furnish the clerk with sufficient copies of the notice, prepared for mailing, and the clerk shall mail the notice.

SECTION 2. IC 29-1-7-7, AS AMENDED BY P.L.143-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language ~~and~~ **in accordance with the following:**

(1) Except as provided in subdivision (2), notice shall be published in the county where:

(A) the court is located; and

(B) if the county in clause (A) is not the county of the decedent's death, the decedent died.

(2) If no newspaper is published in a county in which notice is required to be published under subdivision (1), the notice shall be published in a newspaper published in a county adjacent to that county. However, if:

(A) the counties described in subdivision (1) are adjacent; and

(B) a newspaper is published in only one (1) of the counties in subdivision (1);

then publication of notice in only the county where the newspaper is published is sufficient.

Notice shall be published once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. ~~If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.~~

(c) The notice required under subsection (a) shall be served by first class postage prepaid mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters, except as otherwise ordered by the court. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or



letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ____ day of _____, 20 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ____ day of _____, 20 __.



CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 3. IC 29-1-15-11 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. **(a)** A personal
representative may file a petition to sell, mortgage, or lease any real
property belonging to the estate. The petition shall set forth the reasons
for the application and describe the property involved. ~~He~~ **The**
personal representative may apply:

- (1)** for different authority as to separate parts of the property; or
- (2)** ~~he may apply in the alternative~~ for authority to sell, mortgage,
or lease **the property**.

(b) Upon the filing of the petition, the court shall fix the time and
place for the hearing. ~~thereof~~. Notice of the hearing, unless waived,
shall be given to:

- (1)** all heirs and lienholders, except **for** holders of liens created by
~~said the~~ heirs, whose liens are to be extinguished or transferred to
the proceeds of ~~said the~~ sale in case of intestacy; and ~~to~~
- (2)** all devisees and lienholders, except **for** holders of liens
created by ~~said the~~ devisees, whose liens are to be extinguished
or transferred to the proceeds of ~~said the~~ sale in case of testacy.

~~and~~ The notice shall state briefly the nature of the application and shall
be given as provided in ~~IC 1971, 29-1-1-12~~. **IC 29-1-1-12.**

(c) ~~However,~~ **Notwithstanding subsection (b),** as to any real
property valued at not more than one thousand dollars ~~(\$1,000.00)~~
(\$1,000) exclusive of any liens the court may, in its discretion, hear and
act upon the petition without notice to heirs or devisees. At the hearing
and upon satisfactory proofs, the court may order the sale, mortgage,
or lease of the property described or any part ~~thereof~~. **of the property.**
When a claim secured by a mortgage on real property is, under the
provisions of this probate code, payable at the time of distribution of
the estate or prior ~~thereto~~, **to the time of distribution,** the court with
the consent of the mortgagee may, nevertheless, order the sale of the
real property subject to the mortgage, but ~~such the~~ consent shall release
the estate should a deficiency later appear.

SECTION 4. IC 29-1-16-6 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) Upon the filing
of any account in a decedent's estate, hearing and notice ~~thereof~~ shall
be had as set forth in this section.

(b) If the account is for final settlement, the court or clerk shall set
a date by which all objections to ~~such the~~ final account and petition for
distribution must be filed in writing. ~~and~~ The clerk shall give notice to



all persons entitled to share in the final distribution of ~~said the~~ estate that a final report has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The personal representative shall, at the time ~~said the~~ account is filed, furnish to the clerk **the following:**

(1) The names and addresses of all persons entitled to share in the distribution of the residue of ~~said the~~ estate, whose names and addresses:

(A) are known to the personal representative; or

(B) may by reasonable diligence be ascertained;

as set forth in the personal representative's petition for distribution.

(2) ~~together with~~ Sufficient copies of ~~said the~~ notice prepared for mailing.

The clerk shall send a copy of ~~said the~~ notice by ordinary mail to each of ~~said the~~ parties at least fourteen (14) days prior to ~~such the~~ date ~~Said set by the court.~~ The parties or their attorney of record may waive the service by mail of this notice and where there is an attorney of record, service upon ~~said the parties'~~ attorney shall be sufficient as to the parties represented by ~~said the~~ attorney. Neither a notice nor a hearing is required if all persons entitled to share in the final distribution of the estate waive the service of notice by mail and consent to the final account and petition for distribution without a hearing.

(c) If a person entitled to share in the distribution of the residue of the estate is unknown or cannot be located, the personal representative may give notice by one (1) publication in a newspaper of general circulation, published in the county in which:

(1) the administration is pending; **and**

(2) **if the county described in subdivision (1) is not the county of the decedent's death, the decedent died.**

The deadline for filing an objection is fourteen (14) days before the hearing date. The notice shall state that objections to the final account and petition for distribution must be filed in writing before the hearing date.

(d) If the account is intermediate, but the personal representative has ~~therein~~ petitioned the court that ~~said the~~ account be made final as to the matters and things reported in ~~said the~~ account, the same procedure as to hearing and notice shall be followed as in the case of a final account.

(e) If the account is intermediate and the personal representative makes no request that ~~said the~~ account may be made final as to the matters and things reported in ~~said the~~ account, the court may order ~~such~~ notice as the court ~~deems~~ **considers** necessary or approve the



1 ~~same the account~~ ex parte and without notice. Every ~~such~~ intermediate
2 account approved without notice shall be subject to review by the court
3 at any time and shall not become final until the personal
4 representative's account in final settlement is approved by the court.

